


*Via FedEx and E-mail*

July 20, 2018

Clifford P. Weisel, Ph.D.  
Environmental & Occupational Health Sciences Institute  
Rutgers University  


Re: *Imminent request to review draft rules to rollback crucial rules protecting farmworkers and their families from pesticides*

Dear Dr. Weisel:

We are writing to you in your role as a member of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) Scientific Advisory Panel (“SAP”). As you know, the FIFRA SAP is charged with “comment[ing] as to the impact on health and the environment” of drafts of proposed FIFRA rules. 7 U.S.C. § 136w(d)(1). We understand that the U.S. Environmental Protection Agency (EPA) will soon transmit to the SAP for your review two draft rules that propose revisions to crucial protections provided by the Agricultural Worker Protection Standard (“WPS”) and the Certification of Pesticide Applicators Rule (“CPA Rule”) (“draft rules”). The WPS and CPA rules provide vital protections from exposure to toxic pesticides for hired farmworkers, pesticide applicators, their families and the general public in communities across the country, as well as for the environment. The WPS applies to hired workers and pesticide handlers who labor in farms, fields, nurseries, greenhouses, and forests. The CPA rule governs the training and certification requirements of workers who apply Restricted Use Pesticides (“RUPs”) in a variety of settings, including homes, schools, hospitals, as well as agricultural and industrial establishments. By definition, Restricted Use Pesticides are those that EPA has determined can cause very significant harmful effects, often including death, if not handled properly. The use of RUPs is limited to individuals who are certified as competent to handle these dangerous products safely, or who work under the direct supervision of certified handlers. Under FIFRA, the FIFRA SAP may have as little as 30 days to review the draft rules and provide input to EPA<sup>1</sup>; **it is therefore imperative that you and other members of the SAP be prepared to act quickly.**

If adopted, we believe these draft rules would seriously undermine the health and safety of farmworker families, pesticide handlers, their children, and rural communities across the country and would increase the risks to non-target plants and wildlife, including endangered and threatened species. It is essential that the FIFRA SAP meaningfully review the draft rules and

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<sup>1</sup> Under FIFRA, the SAP technically has 60 days for review. However, EPA is only obligated to respond to the comments and publish the comments and response in the Federal Register if the SAP provides comments to EPA within 30 days of receiving the draft rule. 7 U.S.C. § 136w(d)(1), referring to § 136w(b).

provide the EPA with your best assessment of how the proposed changes could affect the health and well-being of farmworkers and their families, as well as the environment.

While FIFRA permits the SAP to waive its right to review draft pesticide regulations, **it is critical that the SAP not waive review of the draft rules.** The impacts on human health and the environment from changes to the WPS and CPA Rule must be well-understood and documented *before* EPA decides whether to finalize rules that would place farmworkers and pesticide handlers at risk of increased exposure to pesticides and make it harder for them to obtain information about the pesticides they are exposed to. If the FIFRA SAP waives review, EPA and the public will lose a key opportunity to obtain expert guidance on the potential health consequences of the draft rules.<sup>2</sup>

*In particular, we ask that you: 1) conduct a full review of the draft proposed rules; 2) add this matter to the agenda of one of the SAP's public meetings; and 3) issue timely written findings on your conclusions.*

## **Background**

In late December 2017, EPA announced that it had started rulemakings to reconsider – and weaken – requirements in the WPS and the CPA Rule that were adopted during the Obama Administration. In particular, EPA announced that it plans to *repeal recently adopted safeguards* in the WPS that would:

- protect minors from having to work as pesticide handlers and/or protect them from being asked to enter recently treated fields sooner than EPA has determined would be safe to resume routine agricultural work activities;
- allow farmworkers to designate a representative to obtain important pesticide application and hazard information on their behalf, a right afforded workers in other sectors to protect their health and safety; and
- require that if a pesticide sprayer sees workers or other people around the application equipment, they should suspend the application until the unprotected person leaves the area.

EPA has also stated that it intends to weaken the recently adopted provisions in the CPA Rule that would require anyone handling RUPs and supervising handlers of RUPs to be at least 18 years old.

## **Why Analysis By the SAP Is Critical**

As described below, EPA's draft rules appear to take a different view of how to protect farmworkers and their families from pesticides than EPA adopted less than 3 years ago when it

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<sup>2</sup> We note that the EPA Science Advisory Board recently voted to review a series of controversial rules that EPA has proposed over the past eight months. They include a plan that would limit the types of scientific research that the EPA could use to justify environmental regulations, and proposals to strike down limits on greenhouse-gas emissions. Jeff Tollefson, Scientific American, *EPA Science Advisors Question "Secret Science" Rule on Data Transparency* (June 1, 2018), <https://www.scientificamerican.com/article/epa-science-advisors-question-secret-science-rule-on-data-transparency/>

updated the WPS and CPA rules. A data-driven scientific analysis of whether the Obama Administration provisions are needed to avert harm, and whether the draft rules would undermine safety, is called for. The SAP brings special expertise in fields that are directly relevant to assessing the impacts of pesticide use on humans and the environment. It has long been the responsibility and practice of the SAP to advise EPA on the best ways to assess the impacts of proposed regulatory actions, such as these rulemakings, and, inform and advise the agency when it has not adequately evaluated the impacts on the sources and types of data that would improve such assessments.

Minimum Age. The current WPS requires that workers who mix, load, or apply any pesticide on an agricultural establishment, as well as workers who perform “early-entry” work in areas where pesticides were recently applied, must be at least 18 years old. Likewise, the CPA would require states to limit the use of the most toxic pesticides, those classified as “Restricted Use,” only to people who are at least 18 years old. There are currently half a million children under the age of 18 working in agriculture, including some as young as elementary school age.<sup>3</sup>

EPA’s primary rationale for the “minimum age” safeguards, which were adopted during the Obama Administration, was that as people grow older, their judgment and decision-making skills improve, and that more mature pesticide users are likely to make fewer mistakes that would pose a danger to themselves, to other people, and to the environment. EPA cited data about other activities, such as accident rates for sixteen-year-old drivers versus eighteen-year-olds, to support its position. An additional reason for establishing a requirement in the WPS and CPA rules that people be at least eighteen to use pesticides covered by the rules was to protect these users themselves, even when they use the pesticides correctly. As you know and as EPA’s analyses have shown for hundreds of pesticides, the individuals who mix, load, and apply pesticides consistently receive much greater exposure to pesticides in terms of levels and frequency than do any other segment of the general population. Because the human nervous system continues to develop into young adulthood, EPA and public commenters argued that it would be wise to limit the potential for children to receive occupational exposure to pesticides. The agency set the minimum age at eighteen, thereby protecting children who are sixteen and seventeen years old and who are more vulnerable to effects on their nervous systems than older adults. Adopting a minimum age of eighteen for this work aligned the protections for children working in agriculture with the protections afforded to children workers in other industries. See Institute of Medicine and National Research Council. 1998. *Protecting Youth at Work: Health, Safety, and Development of Working Children and Adolescents in the United States*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/6019>.

However, with EPA’s new proposal to allow children younger than eighteen to handle pesticides, the Agency appears to have decided that the scientific and factual basis for setting a minimum age of eighteen is no longer valid. EPA’s draft rules therefore appear to pose a scientific question that needs resolution: was EPA correct in 2015 when it concluded that allowing adolescents to handle pesticides would result in risks to the teens, bystanders, and the environment that could be mitigated with a minimum age requirement? We strongly urge the

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<sup>3</sup> The minimum age requirement in both rules accounts for the needs of family-owned businesses and operators by exempting immediate family members of the owner-operator of agricultural establishments, and private or commercial pesticide applicator businesses.

SAP to consider and report on whether allowing adolescents to handle and apply pesticides poses more risk to themselves and others and to the environment than if pesticide handling were limited to adults (including to review, and assess the overwhelming evidence that was analyzed on this question in 2015).

Designated representative. EPA's proposal to eliminate the designated representative provision of the WPS also raises scientific questions that should be resolved by the FIFRA SAP. The WPS provision is similar to a requirement established over three decades ago by the Occupational Safety and Health Administration (OSHA) for employees in all other types of industries with exposure to chemicals, including pesticides. Further, this requirement applies to farmworkers' requests for information for every other chemical to which they are exposed on an agricultural facility. When EPA adopted the designated representative provision 2.5 years ago, it identified many reasons why an agricultural worker may be unable to access information about the chemicals that they are exposed to, including but not limited to educational and language barriers as well as immigration status, illness or injury. EPA noted several examples of injured farmworkers who have been denied access to safety information after injury, and we are aware of many others. If this provision is repealed it is inevitable that some farmworkers will not get information about pesticides they have been exposed to, which are critical to those providing care and remedy for related symptoms and illness, and which they would have received if they could rely on a designated representative. The EPA, by proposing the repeal, must believe that limiting farmworkers' access to critical hazard information will not impact health and safety. This poses questions of fact and science that would benefit greatly from consideration and report-out by the FIFRA SAP: Does providing workers with better access to information about hazardous substances they are using and being exposed to lead to less exposure, injury and disease and better health care? What impact would elimination of the designated representative provision have on treating physicians' or health care providers' ability to properly diagnose and treat workers exposed to pesticides? Are there data and analyses available from the experience of workers in other industries subject to the OSHA rule that could inform the assessment of EPA's proposed change?

Application exclusion zone. The application exclusion zone requires the common-sense precaution that if someone is applying pesticides and sees workers or other people around the equipment, they should try to avoid spraying them by suspending the application and resuming only after all non-trained and unprotected persons leave the area.

While EPA regulations have long prohibited applicators from spraying unprotected people, the agency adopted the application exclusion zone because EPA's analysis of pesticide poisoning incidents showed that spraying workers who were in an area being treated with pesticides was one of the most common types of incidents. EPA noted that this additional requirement filled a crucial gap because the rules then in place did not provide meaningful guidance on how applicators can prevent human exposure during applications. This is especially important because EPA does not account for workers or bystanders being sprayed with pesticides when it conducts risk assessments to determine whether to register or re-register pesticides; rather, it assumes that these exposures do not happen. Eliminating the "suspend application" mandate, or limiting its scope, raises a scientific question: what impact would modifying this requirement have on the safety of the two and a half million farmworkers who labor in this country's fields

and orchards? Since the “suspend application” mandate has been in effect during the 2018 growing season, the SAP should consider whether EPA has adequately analyzed available incident reports to evaluate the impact of its proposal to remove the requirement. An analysis by the FIFRA SAP would be extremely useful to EPA and the public.

Cost-benefit. We also encourage the SAP to examine the EPA’s analyses supporting the proposed changes to the WPS and CPA to see whether the agency has considered and appropriately used all available scientific information concerning the quantification of the benefits of the rule makings — such as studies on the problem of underreporting of pesticide incidents. The agency’s failure to do so could result in an inaccurate assessment of the potential benefits of its proposals and lead to changes to the existing rules that would unjustifiably increase risks to human health and the environment.

## **Conclusion**

With the lives of children and families across the country at stake, we write to strongly urge you to conduct an in-depth scientific review of the health and environmental impacts of the proposed weakening of these rules on farmworkers, especially farmworkers who are under the age of 18, their families, and rural communities. For all of these reasons, we ask that you: 1) conduct a full review of the draft proposed rule modifying the WPS and CPA rules; 2) add this matter to the agenda of one of the SAP’s public meetings — either a meeting devoted exclusively to this matter or to the agenda of an upcoming meeting; and 3) issue written findings on your conclusions. We also urge you to allow remote participation in any public meeting of the SAP on these matters so that farmworkers and those providing direct medical, legal and social services to farmworkers can readily participate.

Thank you very much for your consideration.

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